

AMENDED IN SENATE JUNE 7, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1767**

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**Introduced by Assembly Member Hill**

February 9, 2010

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An act to add Section 2316 to the Business and Professions Code, *and to amend Section 128335 of the Health and Safety Code*, relating to ~~physicians and surgeons healing arts~~.

LEGISLATIVE COUNSEL'S DIGEST

AB 1767, as amended, Hill. ~~Physicians and surgeons: expert testimony.~~ *Healing arts.*

Existing law requires a board under the Business and Professions Code, including the Medical Board of California, to provide legal representation to any person hired or under contract who provides expertise to the board in the evaluation of an applicant or the conduct of a licensee when that person is named as a defendant in a civil action arising out of the evaluation or any opinions rendered, statements made, or testimony given to the board. Existing law also provides immunity from civil liability to any person providing testimony to the Medical Board of California, the California Board of Podiatric Medicine, or the Department of Justice indicating that a licensee may be guilty of unprofessional conduct or may be impaired because of drug or alcohol abuse or mental illness.

This bill would require the *Office of the Attorney General, with approval by the* Medical Board of California, to provide representation to any licensed physician and surgeon who provides expertise to the board in the evaluation of the conduct of an applicant or a licensee when, as a result of providing that expertise, the physician and surgeon

is subject to a disciplinary proceeding undertaken by a specialty board of which the physician and surgeon is a member.

*Existing law requires the Office of Statewide Health Planning and Development to establish a nonprofit public benefit corporation known as the Health Professions Education Foundation to perform various duties with respect to implementing health professions scholarship and loan programs. Under existing law, the foundation is governed by 13 members, including, until January 1, 2011, 2 members of the Medical Board of California appointed by the board.*

*This bill would extend the 2 foundation board appointments to January 1, 2016.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. (a) The Legislature finds and declares that  
2     consumer protection is further strengthened when the Medical  
3     Board of California uses board-certified physicians and surgeons  
4     in the investigation of complaints and the prosecution of  
5     administrative disciplinary actions. The Legislature further finds  
6     and declares that the use of board-certified physicians and surgeons  
7     is consistent with the requirements of Section 2220.08 of the  
8     Business and Professions Code, and in conformity with existing  
9     case law that requires that the standard of care and any deviations  
10    from the standard of care be established by expert witnesses.

11    (b) The Legislature finds and declares that a disturbing trend  
12    may be emerging whereby board-certified physicians and surgeons  
13    may be subject to discipline from the very boards that certified  
14    them as expert witnesses for the Medical Board of California in  
15    administrative proceedings. Actual or threatened discipline against  
16    board-certified physicians and surgeons may chill participation in  
17    the board's expert reviewer program and may significantly impair  
18    and hamper the effective and timely resolution of complaints and  
19    licensure and disciplinary actions. The Legislature finds and  
20    declares that the enactment of legislation is necessary to prevent  
21    this occurrence and for the protection of California consumers.

22    SEC. 2. Section 2316 is added to the Business and Professions  
23    Code, to read:

1     2316. If a licensed physician and surgeon who provides  
2 expertise to the board in the evaluation of an applicant or a licensee  
3 is, as a result of providing that expertise, the subject of a  
4 disciplinary proceeding undertaken by a specialty board of which  
5 the physician and surgeon is a member, ~~the board shall provide~~  
6 ~~representation for the physician and surgeon in that disciplinary~~  
7 ~~proceeding.~~ *with board approval, the Office of the Attorney*  
8 *General shall represent the physician and surgeon in that*  
9 *disciplinary proceeding regarding any allegation brought against*  
10 *the physician and surgeon as a direct result of providing that*  
11 *expertise to the board.*

12     SEC. 3. *Section 128335 of the Health and Safety Code, as*  
13 *amended by Section 3 of Chapter 317 of the Statutes of 2005, is*  
14 *amended to read:*

15     128335. (a) The office shall establish a nonprofit public benefit  
16 corporation, to be known as the Health Professions Education  
17 Foundation, that shall be governed by a board consisting of a total  
18 of 13 members, nine members appointed by the Governor, one  
19 member appointed by the Speaker of the Assembly, one member  
20 appointed by the Senate Committee on Rules, and two members  
21 of the Medical Board of California appointed by the Medical Board  
22 of California. The members of the foundation board appointed by  
23 the Governor, Speaker of the Assembly, and Senate Committee  
24 on Rules may include representatives of minority groups that are  
25 underrepresented in the health professions, persons employed as  
26 health professionals, and other appropriate members of health or  
27 related professions. All persons considered for appointment shall  
28 have an interest in health programs, an interest in health educational  
29 opportunities for underrepresented groups, and the ability and  
30 desire to solicit funds for the purposes of this article as determined  
31 by the appointing power. The chairperson of the commission shall  
32 also be a nonvoting, ex officio member of the board.

33     (b) The Governor shall appoint the president of the board of  
34 trustees from among those members appointed by the Governor,  
35 the Speaker of the Assembly, the Senate Committee on Rules, and  
36 the Medical Board of California.

37     (c) The director, after consultation with the president of the  
38 board, may appoint a council of advisers comprised of up to nine  
39 members. The council shall advise the director and the board on

1 technical matters and programmatic issues related to the Health  
2 Professions Education Foundation Program.

3 (d) Members of the board and members of the council shall  
4 serve without compensation but shall be reimbursed for any actual  
5 and necessary expenses incurred in connection with their duties  
6 as members of the board or the council. Members appointed by  
7 the Medical Board of California shall serve without compensation,  
8 but shall be reimbursed by the Medical Board of California for  
9 any actual and necessary expenses incurred in connection with  
10 their duties as members of the foundation board.

11 (e) Notwithstanding any provision of law relating to  
12 incompatible activities, no member of the foundation board shall  
13 be considered to be engaged in activities inconsistent and  
14 incompatible with his or her duties solely as a result of membership  
15 on the Medical Board of California.

16 (f) The foundation shall be subject to the Nonprofit Public  
17 Benefit Corporation Law (Part 2 (commencing with Section 5110)  
18 of Division 2 of Title 2 of the Corporations Code), except that if  
19 there is a conflict with this article and the Nonprofit Public Benefit  
20 Corporation Law (Part 2 (commencing with Section 5110) of  
21 Division 2 of Title 2 of the Corporations Code), this article shall  
22 prevail.

23 (g) This section shall remain in effect only until January 1, ~~2011~~  
24 2016, and as of that date is repealed, unless a later enacted statute,  
25 that is enacted before January 1, ~~2011~~ 2016, deletes or extends  
26 that date.

27 *SEC. 4. Section 128335 of the Health and Safety Code, as*  
28 *added by Chapter 317 of the Statutes of 2005, is amended to read:*

29 128335. (a) The office shall establish a nonprofit public benefit  
30 corporation, to be known as the Health Professions Education  
31 Foundation, that shall be governed by a board consisting of nine  
32 members appointed by the Governor, one member appointed by  
33 the Speaker of the Assembly, and one member appointed by the  
34 Senate Committee on Rules. The members of the foundation board  
35 appointed by the Governor, Speaker of the Assembly, and Senate  
36 Committee on Rules may include representatives of minority  
37 groups which are underrepresented in the health professions,  
38 persons employed as health professionals, and other appropriate  
39 members of health or related professions. All persons considered  
40 for appointment shall have an interest in health programs, an

1 interest in health educational opportunities for underrepresented  
2 groups, and the ability and desire to solicit funds for the purposes  
3 of this article as determined by the appointing power. The  
4 chairperson of the commission shall also be a nonvoting, ex officio  
5 member of the board.

6 (b) The Governor shall appoint the president of the board of  
7 trustees from among those members appointed by the Governor,  
8 the Speaker of the Assembly, and the Senate Committee on Rules.

9 (c) The director, after consultation with the president of the  
10 board, may appoint a council of advisers comprised of up to nine  
11 members. The council shall advise the director and the board on  
12 technical matters and programmatic issues related to the Health  
13 Professions Education Foundation Program.

14 (d) Members of the board and members of the council shall  
15 serve without compensation but shall be reimbursed for any actual  
16 and necessary expenses incurred in connection with their duties  
17 as members of the board or the council.

18 (e) The foundation shall be subject to the Nonprofit Public  
19 Benefit Corporation Law (Part 2 (commencing with Section 5110)  
20 of Division 2 of Title 2 of the Corporations Code), except that if  
21 there is a conflict with this article and the Nonprofit Public Benefit  
22 Corporation Law (Part 2 (commencing with Section 5110) of  
23 Division 2 of Title 2 of the Corporations Code), this article shall  
24 prevail.

25 (f) This section shall become operative January 1, ~~2011~~ 2016.